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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,026	12/30/2003	John C. Clark	59487US002	6519

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/748,026

Applicant(s)

CLARK ET AL.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed February 6, 2006, has been entered. Claim 12 has been amended as requested.
2. Said amendment is sufficient to withdraw the 112, 2nd rejection set forth in sections 1-3 of the last Office Action.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-4 and 6-10 stand rejected under 35 USC 102(b) as being anticipated by US 4,643,930 issued to Ucci as set forth in section 5 of the last Office Action.

Claim Rejections - 35 USC § 103

5. Claims 1-5 and 10-12 stand rejected under 35 USC 103(a) as being unpatentable over US 5,612,113 issued to Irwin, Sr. as set forth in section 7 of the last Office Action.
6. Claim 9 stands rejected under 35 USC 103(a) as being unpatentable over US 5,612,113 issued to Irwin, Sr. in view of the cited Ucci patent as set forth in section 8 of the last Office Action.

Response to Arguments

7. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.

8. Applicant traverses the 102 rejection by Ucci by asserting that the spraying and spin finishing techniques of Ucci yield fibers with discontinuous deposits of hydrophobic material across the surface thereof rather than the presently claimed fibers that are hydrophobic across substantially the entire surface thereof (Amendment, paragraph spanning pages 5-6). In response, it is noted that applicant has not provided any evidence that said techniques of Ucci do not produce fibers that are hydrophobic across substantially the entire surface thereof. The arguments of counsel cannot take the place of evidence in the record. *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Additionally, it is noted that applicant's own specification teaches methods of producing the claimed hydrophobic fibers by any known treatment processes (specification, page 6, lines 20-23). Note applicant's working example on page 8, line 17-24 teaches spraying the fluorocarbon onto the carpet surface. Thus, it does not appear that applicant employs a novel or unobvious process to produce the claimed hydrophobic fibers. Furthermore, it is noted that the term "substantially" is not specifically limited to an amount other than at least about 50%. As such, even if the spraying or spin finish techniques of Ucci did produce discontinuous deposits the present claim language does not necessarily exclude such an embodiment.

9. Applicant also traverses the Ucci rejection by arguing that the reference does not teach that the backing is both impervious and hydrophobic (Amendment, page 6, 1st paragraph). In response, note Ucci's teaching that the backing is "substantially impervious to water" (abstract).

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Said backing is rendered impervious by addition of a hydrophobic fluorochemical (col. 2, lines 55-68). Thus, it is asserted that Ucci teaches a backing that is both impervious and hydrophobic.

Therefore, applicant's argument is found unpersuasive and the Ucci rejection is maintained.

10. Regarding the 103 rejection over Irwin, applicant traverses by stating that the reference does not disclose that the backing is hydrophobic or that substantially the entire portion of the fibers of the pile yarn is hydrophobic (Amendment, page 6, 5th paragraph). The examiner respectfully disagrees. Irwin teaches the liquid impervious thermoplastic film may be made of polyethylene, polypropylene, or polyester (claim 2), which are all inherently hydrophobic. Similarly, while Irwin fails to teach the materials for the face yarns, it was asserted that polyester or polypropylene, both of which are inherently hydrophobic fibers, are well known in the art as suitable for carpet face fibers. Thus, contrary to applicant's assertion, Irwin does teach the former feature, while the latter feature is deemed obvious over the prior art. Therefore, the 103 rejection is hereby maintained.

11. With respect to the rejection of claim 9, applicant reiterates the arguments against the Ucci and Irwin references. Since said arguments have been found unpersuasive, the rejection of claim 9 is also maintained.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

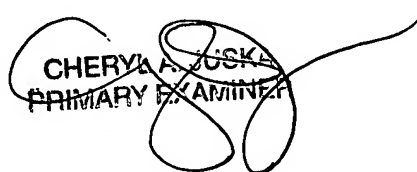
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CHERYL A. JUSKA
PRIMARY EXAMINER



cj
March 29, 2006